

APPEAL NO. 041671
FILED AUGUST 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 16, 2004. The hearing officer resolved the disputed issues by deciding: (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the claimant has not had disability; (3) the date of maximum medical improvement (MMI) is March 16, 2004, but the MMI issue is moot because there was no compensable injury; and (4) the claimant's impairment rating (IR) is zero percent, but the IR issue is moot because there was no compensable injury. The claimant appeals the hearing officer's determinations on all of the disputed issues, contending that the hearing officer's determinations are clearly wrong and manifestly unjust. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10). It is undisputed that the claimant was in the course and scope of her employment when she assisted a coworker who was having a seizure at work. The question for resolution was whether the claimant sustained an injury, that is, damage or harm to the physical structure of her body, as a result of that incident. The hearing officer did not find the claimant's testimony persuasive regarding the occurrence of back pain due to assisting the coworker. There are conflicting medical opinions in evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The hearing officer did not err in determining that the claimant has not had disability because without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

The hearing officer's determinations on the disputed issues of MMI and IR are based on the report of the designated doctor, whose report has presumptive weight unless it is contrary to the great weight of the other medical evidence. Sections 408.122(c) and 408.125(c). However, as determined by the hearing officer, the issues of MMI and IR are rendered moot because she determined that the claimant did not sustain a compensable injury. Since we are affirming the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm her determinations that the issues of MMI and IR are moot because there is no

compensable injury upon which to base MMI and IR determinations. See Sections 401.011(24) and 401.011(30).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge